

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5715 OF 2005

1. Moula Kasim Mulla
2. Ajit Hussain Jamadar ...Applicants
Vs.
The State of Maharashtra ...Respondent

Shri. Pratap Patil for the Applicants.
Ms S.D. Shinde, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 19, 2005.

P.C.:

1. Heard the Advocate appearing for the Applicants and the learned A.P.P. for the State. The offence alleged against the Applicants and others is under section 307, 147, 148, 149 and 506 of the Indian Penal Code and section 3 and 25 of the Indian Arms Act. The allegation against the Applicants is as regards assault on one Rajendra Bajrang Chavan. The allegation against the Applicant No.1 is that he assaulted said Rajendra by stick and the Applicant No.2 assaulted the said Rajendra by a cricket stump. The allegation against the co-accused Dhanaji is as regards assault by a knife.

2. The learned Advocate for the Applicant submitted that the only serious injuries on the person of Rajendra are fracture of fibula and lateral malleous. He submitted that the chargesheet is filed in June, 2005 and after filing of the chargesheet,

custody of the Applicants is not required.

3. The learned A.P.P. submitted that there is recovery of a stick at the instance of the Applicant No.2 and at the instance of the Applicant No.1, there is recovery of his blood stained clothes. The learned A.P.P. submitted that assault on Rajendra has resulted into three fractures and there are other injuries on the person of Rajendra and therefore, no case is made out for enlarging the accused on bail.

4. I have considered the submissions. It must be noted that in view of what is observed by the learned Sessions Judge in paragraph No.4 of his order, a query was made regarding criminal antecedents of the Applicants to the learned A.P.P. The learned A.P.P. on instructions stated that criminal antecedents of the Applicants are not on record. While rejecting the Application made by the Applicants and others, the learned Additional Sessions Judge has noted in paragraph No.4 that the victim Rajendra is a hard-core criminal. It is pertinent to note that there is no recovery of stick at the instance of the Applicant No.1 who has allegedly assaulted Rajendra by stick. The case of the prosecution appears to be that co-accused Dhanaji assaulted Rajendra by a knife. The injury certificate shows that there are four C.L.W.'s and four contusions suffered by the injured Rajendra.

The injuries on the head appear to be C.L.W.

5. Whether Section 307 of the Indian Penal Code will apply or not is a matter for trial. However, considering the facts and circumstances of the case, after filing of chargesheet, the Applicants need not be detained in custody, especially, when there are no criminal antecedents of the Applicants. Hence, case is made out for enlarging the Applicants on bail.

6. Hence, I pass the following order:

: O R D E R :

i) The Applicants shall be enlarged on bail in connection with **C.R.No.26 of 2005 registered with Ashta Police Station**, subject to furnishing a personal bond of **Rs.15,000/- each** with one or two local sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicants shall report to the concerned Police Station once in a fortnight till the conclusion of the trial.

iii) The Bail is granted subject to condition that the Applicants shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses

and shall not in any manner tamper with the prosecution evidence.

iv) The Applicants shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicants to delay the trial may be a ground for cancellation of bail.

v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE